

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

M2 CONSULTING, INC.

Plaintiff,

v.

C.A. No. 03-12589-GAO

MRO SOFTWARE, INC.

Defendant.

**AFFIDAVIT OF JAMES BATTLE IN SUPPORT OF
MRO SOFTWARE, INC.'S MOTION FOR PRELIMINARY INJUNCTION**

I, JAMES BATTLE, do hereby depose and state as follows:

Personal Background

1. My name is James Battle. I am the Vice President of Product Development for MRO Software, Inc. ("MRO"), the defendant and plaintiff-in-counterclaim in this action. The facts in this affidavit are based upon my personal knowledge, except where I have indicated otherwise.

2. For the last 12 years, I have worked at MRO. MRO is a public company with a flagship product named "MAXIMO". Our customers use MAXIMO for strategic asset management, including the procurement, deployment, tracking, and maintenance of high-value capital assets such as manufacturing plants, office space and aircraft. During my tenure at the company, I have been a MAXIMO Product Manager, Manager of the Product Management Group, Director of Product Development, and I am currently Vice President of Product Development.

3. As Vice President of Product Development at MRO, I oversee the technical development of the company's MAXIMO product line, and have ultimate responsibility for the company's programming team. I am intimately familiar with the development, operation and installation of MAXIMO, MRO's flagship product and the software at the heart of this litigation.

MAXIMO

4. Companies use MAXIMO to maintain their high-value capital assets. For example, a company might use MAXIMO to address facilities management needs, such as maintaining warehouses or office space.

5. Upon information and belief, M2 Consulting, Inc. was licensed to use MAXIMO Version 5.

6. As sold by MRO, MAXIMO Version 5 consists of approximately 50 separate and distinct software applications, over 3,500 different program files, and over 500,000 lines of program code. The vast majority (over 95%) of these applications, program files and program code were originally authored by MRO, or on its behalf by contract programmers where all intellectual property rights were assigned to MRO. The balance (less than 5%) of MAXIMO was authored by third party software developers and are embedded into MAXIMO pursuant to separate license agreements.

7. The balance of this Affidavit speaks only to those portions of MAXIMO (over 95% of the total product) that are exclusively owned by MRO.

8. Computer programs such as MAXIMO consist of a set of instructions that are read into a computer's memory and when executed cause the computer to display information to the end user.

9. Each time MAXIMO is used for any purpose, the MRO-authored and owned program files are copied from the computer's permanent storage into the computer's temporary memory, or random access memory ("RAM").

10. From an end-user perspective, MAXIMO appears to consist of a series of screen displays, with graphics, "buttons", and fields for data entry and data display, which are displayed to the end user within an Internet browser, such as Microsoft's Internet Explorer. Each of these screens is a work of authorship, owned by MRO.

11. Each time MAXIMO is used, for any purpose, the MRO-authored and owned instructions that cause the screen displays to be rendered are copied from the computer's permanent storage into its temporary memory or RAM, and the MRO-authored and owned screen displays are displayed to the end-user.

12. The computer operating system that executes MAXIMO (i.e. Windows) employs a technique known as "paging". This means that when the volume of instructions and data being copied into the computer's temporary memory or RAM are too large for the computer's memory, only as much data as possible is copied into temporary memory, and the rest is copied to the computer's hard disk in what is referred to as a "swap" file. When the program needs data from the hard disk, it exchanges a portion of data (called a "page" or "segment") in temporary memory with a portion of data on the disk.

13. When MAXIMO is used for any purpose, the paging technique causes MRO-authored and owned program files to be copied from temporary memory or RAM onto the computer's hard disk, in swap files, repeatedly during normal use of MAXIMO.

14. MAXIMO is "web-architected", meaning that the server portion of MAXIMO runs from a computer located behind a security "firewall", and end users are able to access and use MAXIMO via remote access over the Internet. An end user using a computer from virtually anywhere in the world can simply run an Internet Browser such as Microsoft's Internet Explorer, type in the appropriate URL, and this (together with input subsequently submitted by the end user when interacting with MAXIMO) will cause the server portion of MAXIMO to copy and send to the end user's computer a series of MAXIMO HTML pages, containing MRO-authored and owned software program code, and the end-user will be presented with MAXIMO screen displays, designed and developed by MRO.

15. Each time MAXIMO is used remotely via the Internet for any purpose, MRO-authored and owned HTML pages and program code are copied and distributed over the Internet to the end user, causing the display of MAXIMO screens wherever in the world the end user happens to be located.

16. On information and belief M2 Consulting, Inc. ("M2") is hosting MAXIMO for approximately twenty seven (27) corporate customers , and at least two hundred and sixty (260) individual end users. Based on my attendance at the deposition of Jeff Foley of M2 it is my understanding that, or each of these 27 corporate customers, M2 has made, installed and is running a separate and distinct copy of the server portion of the MAXIMO software, and that M2 is making MAXIMO available remotely via the Internet to each of the approximately 260 individual end users.

17. Each time an M2 individual end user uses or accesses MAXIMO, one of the 27 separate and distinct copies of MAXIMO that M2 has installed on its server

computers is run, which results in the copying into temporary memory of the MAXIMO computer program files (see ¶¶8 & 9 above), the copying of MAXIMO instructions and the rendering of MAXIMO screen displays (see ¶¶10 & 11 above), the swapping of MAXIMO program files between memory and hard disks (see ¶¶12 & 13 above), and the copying and distribution of MAXIMO program code and the rendering of MAXIMO screen displays to one of M2's 260 individual end users via the Internet (see ¶¶14 & 15 above) wherever they may be located around the world.

Signed under the pains and penalties of perjury this 30th day of December 2005.

/s/ James Battle
James Battle